

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 01-0104 CG
State of Indiana Charity Gaming
Denial of Charity Gaming License Application**

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ISSUES

I. Charity Gaming – Qualified Organization

Authority: IC 4-32-6-20; IC 4-32-9-4; IC 6-8.1-5-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner, S.A.F.E. (Save Adolescence Future Efforts) Youth Program, protests the Department's denial of its Indiana Charity Gaming License Application.

STATEMENT OF FACTS

The Petitioner protests the Department's denial of its Indiana Charity Gaming License Application. An investigation by the Department's Criminal Investigation Division could not verify the existence of Petitioner's parent organization Followers of Christ Church (FOCC). Petitioner protested the Department's denial of its Indiana Charity Gaming License in a letter dated May 9, 2001. The Petitioner's protest was filed in a timely manner. A hearing on Petitioner's protest was held on July 19, 2001 pursuant to IC § 4-32-8-1.

I. Charity Gaming – Qualified Organization

DISCUSSION

The Indiana Department of Revenue has the primary responsibility to administer, investigate, and enforce IC § 4-32, and has the sole authority to license entities under that article. To be approved for a license, the entity must comply with the definition of a qualified organization under IC § 4-32-6-20. An entity, which complies with the definition and has supplied other required information along with a license fee, may conduct various charity gaming events once a license is obtained. IC 4-32-6-20 states,

“(a) "Qualified organization" means: (1) a bona fide religious... organization operating in Indiana that: (A) operates without profit to the organization's members; (B) is exempt from taxation under Section 501 of the Internal Revenue Code; and (C) has been continuously in existence in Indiana for at least five (5) years or is *affiliated with a parent organization that has been in existence in Indiana for at least five (5) years*;...”¹

The Petitioner's CG-1 states that it was formed on April 12, 1994. The organization's bylaws were dated April 12, 1994 but they were not signed. (See Department's Exhibit A). Along with the Petitioner's application were documents supporting the five years existence for Followers of Christ Church c/o FOCCUS Co. Inc. of Indiana (FOCC) and not the Petitioner. The Petitioner chose to rely upon its parent organization FOCC for meeting the five years of existence requirement found in IC 4-32-6-20. The documentation supplied by the Petitioner substantiates the fact that the § 501(c) organization FOCC was leasing automobiles, had a bank account, procured automobile insurance, and paid utility bills, etc. None of the documents supplied by the Petitioner substantiated the main purpose of FOCC as a not-for-profit organization.

According to the Indiana Department of State Revenue's Criminal Investigation Division, an investigation into the Petitioner's parent organization determined that the FOCC did not exist at the address supplied by Petitioner on its Indiana Charity Gaming Qualification Application (CG-1). The Department's first witness testified under oath that he observed a home (purported to be the location of FOCC) on two separate occasions. The first time was on December 9, 2000 from 8:55am to approximately 9:45am and then again on February 24, 2001 from 11:05am to 11:45am. (Record at 7-8). On each occasion, the Department's investigator was asked to observe if indeed there were church services being held by FOCC (this instruction by the Department was irrelevant in determining FOCC's existence). On both occasions, according to the Department's witness, there were no signs of worship being held at that location. On direct examination, the witness commented that the house under surveillance was yellow in color, and had blinds covering the windows. (Record at 7-8).The Department's second witness testified that he observed several locations ranging from homes to businesses looking for FOCC. The witness admitted that these addresses were not on Petitioner's application because the businesses have been closed. (Record at 31). As for his visits to these locations, the witness could only remember vague dates, times, and locations. The witness could not remember any addresses, or the names of individuals he spoke with. The Department's witness stated that he went to the address of FOCC on several occasions during the week and also on Sunday. (Record at 33).The witness also testified that the residence in question did have a garage but that the garage did not have any windows. (Record at 32).

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim that the entity does not qualify for a license is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See

¹ The Court of Appeals of Indiana Fifth District questioned the constitutionality of the Department's interpretation of the definition of a "qualified organization" more specifically the phrase "*in Indiana*" in Dept. of Revenue v. There to Care, Inc., 638 N.E.2d 871, at 873 (Ind. App. 5 Dist 1994). The amended version of IC 4-32-6-20(a)(1)(C) was not before the court and they did not address its constitutionality.

Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). However, the Department must have a good faith basis for their actions.

IC 4-32-9-4 provides in pertinent part, “(a) Each organization applying for a bingo license... must submit to the department a written application on a form prescribed by the department. (b) The application must include the information that the department requires, including the following: ... (6) Sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization...(9) Any other information considered necessary by the department....”

Certain characteristics are generally attributed to churches. These attributes have been developed by the IRS and by court decision. They include:

- a) A distinct legal existence
- b) A recognized creed and form of worship
- c) A definite and distinct ecclesiastical government
- d) A formal code of doctrine and discipline
- e) A distinct religious history
- f) A membership not associated with any other church or denomination
- g) An organization of ordained ministers
- h) Ordained ministers selected after completing prescribed courses of study
- i) A literature of its own
- j) Established places of worship
- k) Regular congregations
- l) Regular religious services
- m) “Sunday schools” for the religious instruction of the young
- n) Schools for the preparation of its ministers.

Although the list is not all-inclusive, and not all the attributes must be present in every case, these characteristics, together with other facts and circumstances, are generally used to determine whether an organization constitutes a church for federal tax purposes.

According to the Petitioner, FOCC currently holds church services in Indianapolis at a Michigan Street address. Prior to using this location FOCC had a Post Road address until November 2000. From November 2000 to June of 2000 FOCC held its services at the Carmel address in question.

At hearing, the Petitioner supplied church bulletins for services held on both December 9, 2000 and February 24, 2001. (Petitioner's Exhibit No. 1 & 2). According to the Petitioner's witness (Pastor of FOCC), the Sabbath school begins at 9:30am, and the church service begins at 11:00am and ends at approximately 1:00pm. (Record at 35). The witness also stated under oath that the number of members present for services ranges anywhere from five (5), to as many as thirty (30) members. (Record at 38). The witness was also asked to describe the home which was according to the witness not yellow but gray, and that the garage had windows as well as sheer draperies on the windows, and not blinds. (Record at 40, 57-58). Petitioner's testimony and exhibits presented at hearing raises the presumption that the Department observed the wrong house on several occasions.

The Petitioner's argument supported by clear and convincing evidence has overcome the burden of proof established in Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). The evidence supplied by the Petitioner suggests that its parent FOCC was operating at the location provided on the CG-1, and carrying out its intended purpose.

FINDING

The Petitioner's protest is sustained.